COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

December 19, 2005

Ms. Paula Higashi, Executive Director
Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Los Angeles County's Reconsideration
State-Mandated Claiming Costs [CSM-4204]
Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984

We herein submit our reconsideration of Commission's April 24, 1986 State-Mandated Claiming Costs decision, finding a reimbursable State mandated program imposed under the subject law.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley
Auditor-Controller

JTM:CY:LK

Los Angeles County's Reconsideration
State-Mandated Claiming Costs [CSM-4204]
Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984

In Section 17 of Chapter 72, Statutes of 2005 [AB No. 138], the Legislature has directed the Commission on State Mandates [Commission] to reconsider its final decision, adopted on April 24, 1986, which funds claiming costs incurred by local government in order to obtain reimbursement for State mandated programs. Specifically, Section 17 provides, in pertinent part, that:

> "(a) Notwithstanding any other provision of law, the Commission on State Mandates, no later than June 30, 2006, shall reconsider its test claim statement of decision in CSM-4202 on the Mandate Reimbursement Program to determine whether Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since these statutes were enacted. ... Any changes by the commission to the original statement of decision in CSM-4202 shall be deemed effective on July 1, 2006."

In accordance with this legislative directive, the Commission issued a "Notice of Reconsideration, Comment Period and Hearing Schedule" and established Case No. 05-RL-4204-02, entitled "Mandate Reimbursement Process" and, on November 22, 2005, requested "simultaneous opening briefs and rebuttal comments on each of the following issues":

> ". In light of federal and state statutes enacted and federal and state court decisions rendered since the subject statutes were enacted, is there a new program, or higher level of service imposed on local governments within the meaning of article XIII B, section 6 of the California Constitution, and if so, are there costs mandated by the state pursuant to government code section 17514 and Government Code section 17556?
>
> · Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source? "

The County of Los Angeles [County] finds that reimbursement for State-mandated claiming costs is still required.

State's Claiming Requirements

On April 24, 1986, the Commission on State Mandates [Commission] adopted a Statement of Decision which effectively funded costs incurred by local government to meet stringent claiming requirements imposed by the State under Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984.

The Commission's decision enabled the State to make payments to local government which were unambiguously required under Section 6 of Article XIII B of the California Constitution:

> "SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. ... " [Emphasis added.]

Section 6 clearly does not prohibit reimbursing claiming costs for allowable State mandated programs. Indeed, this is the only way that the State has established to meet its constitutional obligation to local governments.

State's Choice

The State had unfettered discretion in imposing particular claiming mandates in order to make required subventions. As noted by Fresno County during the test claim proceedings:

> "The state is required to reimburse Local agencies for any increased costs required by a state mandate. This could be done without the need for claims submitted by counties --- e.g., through direct funding, subtraction of administrative costs from revenue sources, or user fees --- but the state

has established alternative and sometimes costly procedures[1]. The purpose of these claiming laws and legislative disclaimers is to benefit the state at the expense of the local agency, e. g., Revenue and Taxation Code Section 2231(d).

For example, test claims must be submitted as prescribed by the Commission (Government Code Section 17555) and according to legislative deadlines (Revenue and Taxation Code Section 2253.8). Similarly reimbursement claims must be submitted according to State-established procedures (Revenue and Taxation Code Section 2231 (d)(1)(a)) and deadlines (Revenue and Taxation Code Section 2238). In fact the claiming process has now been established as the only procedure by which counties may obtain the reimbursement required by Article XIII B (Government Code Section 17552).

Occasionally code sections include the term "may" instead of or in addition to "shall" and, thus, give the impression that the claiming procedures are optional. However, since the state must pay for mandated costs but will do so only when procedures established by it are followed, local agencies have no option except to perform additional administrative activities. These include the collection of mandate data and the preparation of claim forms and supporting schedules by county employees or through contracted support services." [Admin. Record, pages 24-25]

Accordingly, local governments' costs in preparing and processing claims to recover costs for providing State mandated services is necessary in order for local governments to be reimbursed but also it is necessary in order for the State to meet its obligation under Section 6 of Article XIII B of the California Constitution. The preparation and processing of claims is, then, an undeniable mandate on both the State and local government.

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[1] In this regard, it should be noted that the test claim legislation mandates that local agency and school district claimants must comply with statutes, now 102 in number, in Title 2, Division 4, Part 7 of the Government Code. These statutes detail provisions for determining and obtaining reimbursements for "costs mandated by the State", as defined in Government Code Section 17514. In addition, these statutes are further detailed in 94 sections of Title 2, Division 2, Chapter 2.5 of the California Code of Regulations. Also, in order to obtain reimbursement for programs deemed to be reimbursable by the Commission, claimants must comply with a 633 page "Mandated Cost Manual for Local Agencies" issued by the State Controller's Office [SCO] annually and most recently in December 2005.

1986 Funding Decision

In 1986, the Commission analyzed Fresno County's Mandate Reimbursement Process claim and found all the required elements of a reimbursable state mandated program to be present. The Commission noted that:

> "1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; Legislative appropriation; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller." [Admin. Record, page 162]

The Commission found that if all of the above conditions were met, that claimants' costs in having to file test claims and reimbursements claims were reimbursable. Specifically, the Commission concluded that:

> "5. The County of Fresno has incurred increased costs as a result of having to file test claims and reimbursement claims which are required by Chapter 486/75 and Chapter 1459/84.
>
> 6. The County of Fresno's increased costs are mandated by the State.
>
> 7. Government Code Section 17514 defines costs mandated by the state as any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

III.

DETERMINATION OF ISSUES

1. The Commission has authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984 impose a reimbursable state mandate upon local government. The County of Fresno has established that these two statutes have imposed a new program and an increased level of service by requiring local

governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the cost of the mandated program." [Admin. Record, page 163]

The Commission, in reaching its conclusion, found Fresno County's explanation of the mandatory nature of the claims process to be persuasive.

Mandatory Claims Process

Fresno County explained the mandatory nature of the claims process as follows:

"In language reminiscent of the death sentence appeals of Caryl Chessman, it has been alleged that claiming cost are the fault of the county. That is, if you don't want the costs, don't file the claims. We disagree with the contention that this is a voluntary process.

1. The reimbursement process is mandatory upon the state. Article XIII B uses term "shall" when talking about the subvention of mandate funds. The only "permissive" instances relate to mandates enacted prior to January 1, 1975, and to the two other constitution exceptions that do not apply to this claim.

2. The language of the mandate statutes enacted after 1973 intend a mandatory process. For example, the Revenue and Taxation Code establishes when claims must be filed/4 and dictates financial penalties for delinquent claims.5/ It complicates the claiming process by requiring offsets for cost savings.6/ Indeed Section 2131(d) uses the mandatory "shall" language when talking about local agencies having to submit claims in the form required by Section 2218.5; and Section 2231 specifically states, "claims for direct and indirect costs... shall be filed in the manner prescribed by the State Controller". Similar language is found in the new Government Code provisions; e.g., Section 17552 states that its chapter shall provide the sole and exclusive procedure by which a local agency .... may claim reimbursement for costs mandated by the state ...." Similarly, Section 17555 states that claims "shall be submitted in a form prescribed by the commission." (Underlining added).

3. If local agencies do not submit claims as required by legislature, they will not get paid; and if they are not paid, the law is no longer enforceable. In short, the burden of paying for mandates is entirely the responsibility of the state, and the constitution does not authorize

> the shifting of any part of the cost to the local agencies. Whatever procedures are dictated for that purpose must be paid for by the state. To argue otherwise is to endorse anarchy." [Admin. Record, Pages 36-37]

Accordingly, the claims process detailed under the test claim legislation is mandatory. And this result does not suffer under recent court decisions.

San Diego

Recently, in the San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 decision, the California Supreme Court reviewed the necessary conditions for finding a reimbursable State mandated program like those found under the instant test claim legislation. Such reimbursement is required if the test claim legislation imposes a new mandatory program.

The question to be addressed here is whether the San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 decision now requires that the Commission's instant test claim decision be overturned. The County believes not.

Even assuming for the sake of argument that there is some small amount of judgment or discretion as to the mode, manner and means of processing particular claims, the San Diego Court indicated, on page 876, that this judgmental element did not invalidate the mandatory classification of the resulting activities:

> ****606** Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement *****486** under ***888**article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 [FN23] and contrary to past decisions in

> which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra*, 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.*, at pp. 537-538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ--and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced, supra*, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such a result."

As in the Carmel Valley case, new minimum standards for claims processing are mandated even though there is some discretion as to how those standards are to be implemented. But such minimum standards must be implemented.

Accordingly, mandate reimbursement processing required under the test claim legislation is a mandatory program.

Further, the mandates reimbursement process implements State law, not federal law, and thus qualifies for reimbursement. In order for federal law to be implicated it must be explicitly identified. As explained by the Court in San Diego, on page 873:

> " Accordingly, it appears that despite the Department's late discovery of 20 United States Code section 7151, at the time relevant here (regarding legislation in effect through mid-1994), neither 20 United States Code section 7151, nor either of its predecessors, compelled states to enact a law such as Education Code section 48915's

mandatory expulsion provision. Therefore, we reject the Department's assertion that, during the time period at issue in this case, Education Code section 48915's mandatory expulsion provision constituted an implementation of a federal, rather than a state, mandate."

Also, the mandates reimbursement process is not subject to federal law as a condition of receiving federal funding as no federal funds are available for such activities[2]. Where federal funding is not present, the San Diego Court noted, on pages 872-873, that federal law is not implicated:

"The Department further asserts that more than $2.8 billion in federal funds under the No Child Left Behind Act are included "for local use" in the 2003-04 state budget. (Cal. State Budget, 2003-04, Budget Highlights, p. 4.) The Department argues that in light of the requirements set forth in 20 United States Code section 7151, and the amount of federal program funds at issue under the No Child Left Behind Act, the financial consequences to the state and to the school districts of failing to comply with 20 United States Code section 7151 are such that as a practical matter, ***883**Education Code section 48915's mandatory expulsion provision in reality constitutes an implementation of federal law, and hence resulting costs are nonreimbursable except to the extent they exceed the requirements of federal law. (See Govt.Code, § 17556, subd. (c); see also *Kern High School Dist., supra,* 30 Cal.4th 727, 749-751, 134 Cal.Rptr.2d 237, 68 P.3d 1203; *City of Sacramento, supra,* 50 Cal.3d 51, 70-76, 266 Cal.Rptr. 139, 785 P.2d 522.) Moreover, the Department asserts, to the extent school districts are ***482** compelled by federal law, through Education Code section 48915's mandatory expulsion provision, to hold hearings pursuant to section 48918 in cases of firearm possession on school grounds, under 20 United States Code section 7164 (defining prohibited uses of program funds), *all* costs of such hearings properly may be paid out of federal program funds, and hence we should "view the ... provision of program funding as satisfying, in advance, any reimbursement requirement." (*Kern High School Dist., supra,* 30 Cal.4th 727, 747, 134 Cal.Rptr.2d 237, 68 P.3d 1203.)

****603** Although the Department asserts that this federal law and

[2] See attached declaration of Leonard Kaye, SB90 Coordinator for the County of Los Angeles, stating that no federal, state or other funding has been provided for this program.

> program existed at the time relevant in this matter (that is, through mid-1994), our review of the statutes and relevant history suggests otherwise. - - - Therefore, we reject the Department's assertion that, during the time period at issue in this case, Education Code section 48915's mandatory expulsion provision constituted an implementation of a federal, rather than a state, mandate."

Therefore, Commission's 1986 mandate reimbursement process decision remains undisturbed by current law. Moreover, Commission's 1986 decision serves as an effective alternative to litigation --- to opening the 'floodgates of litigation'.

Avoiding Litigation

Government Code section 17500 was added by Chapter 1459, Statutes of 1984 precisely to establish a mandatory administrative claiming process, a process which must be exhausted before litigation on State reimbursement matters was initiated. Specifically, section 17500 provides:

> "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.
>
> It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIII B of the California Constitution."

Accordingly, a new claiming process was forged --- creating a better partnership

between State and local government.

State - Local Partnership

As noted in a March 22, 1991 letter to Mr. Robert Eich, Executive Director of the Commission, from Dr. Carol A. Miller, Education Mandated Cost Network Consultant, attached herein as Exhibit A, the drafters of Senate Bill 90, Statutes of 1972 [SB90], had a State-local partnership in mind. In particular, Dr. Miller indicates, on pages 2-4, that:

> "At the Commission's January 24, 1991, hearing, Kenneth F. Hall, former Chief Deputy of the Department of Finance and drafter of Senate Bill 90/1972, gave the following testimony regarding the intent of the Legislature and Administration in enacting SB90.
>
> "... at the time [I] had responsibility for forging a compromise between the then Speaker of the State Assembly Bob Moretti, and the Governor at that time Ronald Reagan that related to a whole series of financial issues for the state of California.
>
> " One of the cornerstones of the legislation that arose out of that SB90 is the issue that you administer as part of this Commission. The mandate cost reimbursement provision was very important cornerstone of SB90.
>
> "... there are three features of mandates [the mandate reimbursement provision] that I think you need to understand.
>
> "First, ... they felt that this provision was very important part of the partnership between the state of California and local agencies. If the state of California had full immunity to be able to impose obligations upon local agencies without reimbursing the costs they felt that would break that important partnership and relationship between state and local agencies.
>
> "Second, ... They felt that the provision was important because it recognized that ... schools, cities and counties had limited revenues as a result of that legislation.
>
> "For schools we imposed revenue limit provisions. For counties and for cities we imposed specific property tax controls.

"And the two leaders.... said if we are going to impose these kind of controls on revenues for the local agencies, so too should we impose controls on ourselves in terms of imposing obligations on local agencies.

"And third, ... was a recognition by the two members of the leadership and the legislature that we needed to do something to stem the flow of bills that ere coming out of the legislature, that were passed with full immunity by the legislature because there were no appropriations within...[T]he legislature was passing on obligations to local agencies, taking the credit for having made significant advances in terms of meeting California's needs and not providing the funding for local agencies to meet those needs.

"If you adopt a provision that is a redirected effort type of regulation or type of conclusion [i.e., excluding "fixed environment" reimbursement] you put a hole in the intent of that protection for local agencies that is enormous for the legislature to be able to go through in the future, and [for] the state of California to be able to impose obligations on local agencies without any type of reimbursement .... And I would say [that would] break faith with the initial authors of SB90.

The Third Appellate Court, in its decision in Long Beach Unified School District v. State of California (Long Beach), concluded that, in enacting Article XIIIB, Section 6, "...the voters provided for mandatory reimbursement except for the three narrowly drawn exceptions found in (a), (b), and (c) ..." as follows:

"(a) Legislative mandates requested by the local agency affected;
(b) Legislation defining a new crime or changing an existing definition of a crime;
or
(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

State-mandated activities carried out by existing local agency or school district staff in a "fixed environment" was not excepted from reimbursement by Section 6. In addition, the Long Beach decision,

citing Carmel Valley Fire Protection District vs. State of California and Hale vs. Bohannon (1952-38 Cal.2nd 458, 471) respectively, states:

> "Unsupported legislative disclaimers are insufficient to defeat reimbursement."
>
> ----- and---
>
> "The Legislature cannot limit a constitutional right." "

Therefore, the constitutional rights that local governments and schools have been granted under Article XIIIB, Section 6 of the California Constitution may not be abridged, curtailed or limited.

Finally, without an administrative remedy, claimants would have no alternative but to litigate --- precisely the result the test claim legislation was intended to avoid.

Education Mandated Cost Network

March 22, 1991

Mr. Robert Eich
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: Reimbursement for "Fixed Environment" Labor Costs

Dear Mr. Eich:

You have asked that all interested parties answer the following question: Do local agencies or school districts incur reimbursable costs when their existing staff perform state-mandated duties in a "fixed environment" as a part of their normal workday, when those duties result from a new program or higher level of service in an existing program? The term "fixed environment" was defined as:

> "...a situation where staff time expended by employees, to implement new state mandated requirements, occurs in a work environment that has a specific limit on the number hours in a normal workday. An example...would be teachers in a classroom environment, where a mandated activity must be accomplished before the students are dismissed for the day."

The following comments and information are offered on behalf of the 750+ school district, county office of education and community college district members of the Education Mandated Cost Network (EMCN).

A "Fixed" Environment Is Not Actually Fixed

The so-called "fixed" environment is not as fixed as it may appear to the uninformed casual observer. As illustrated in the "open letter" from a local high school math teacher (attached in pertinent part), there are activities that flow in and out of that particular period of time -- i.e., classroom time when students are present. When activities are mandated during that period of time that require additional teacher/student interaction they force other activities -- like grading papers, grading tests, preparing lesson plans and other related duties that could be accomplished while students are reading assignments, etc. -- to be carried out after the students leave.

It is not possible or responsible to replace activities that teach students course curriculum -- such as reading, math, etc. -- with non-academic activities, such as health testing, safety exercises, etc. If this occurs, the students fall behind in their academic studies. When such additional activities are mandated during classroom time, they extend the workday of the teacher by forcing some teacher activities into after school time, unless another equal mandated activity is specified as being repealed.

As a result, at some point there is an additional cost to the school district, because the district must either hire additional staff to assist the teachers or must increase the teachers' pay to compensate them for the increased workload. In an earlier hearing on this subject, Rick Knott, San Diego Unified School District, testified that his district has had to incur additional costs by hiring additional staff to assist their mandate-burdened teachers.

Intent of SB 90 and Proposition 4

At the Commission's January 24, 1991, hearing, Kenneth F. Hall, former Chief Deputy of the Department of Finance and drafter of Senate Bill 90/1972, gave the following testimony regarding the intent of the Legislature and Administration in enacting SB 90.

> "...at that time [I] had responsibility for forging a compromise between the then Speaker of the State Assembly Bob Moretti, and the Governor at that time Ronald Reagan that related to a whole series of financial issues for the state of California.
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> "One of the cornerstones of the legislation that arose out of that SB 90 is the issue that you administer as part of this Commission. The mandate cost reimbursement provision was a very important cornerstone of SB 90.
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> "...there are three features of mandates [the mandate reimbursement provision] that I think you need to understand.
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> "First,...they felt that this provision was a very important part of the partnership between the state of California and local agencies. If the state of California had full immunity to be able to impose obligations upon local agencies without reimbursing the costs they felt that would break that important partnership and relationship between state and local agencies.
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> "Second,...they felt that the provision was important because it recognized that ...schools, cities and counties had limited revenues as a result of that legislation.

> "For schools we imposed revenue limit provisions. For counties and for cities we imposed specific property tax controls.
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> "And the two leaders...said if we are going to impose these kind of controls on revenues for the local agencies, so too should we impose controls on ourselves in terms imposing obligations on local agencies.
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> "And third,...was a recognition by the two members of the leadership and the legislature that we needed to do something to stem the flow of bills that were coming out of the legislature, that were passed with full immunity by the legislature because there were no appropriations within....[T]he legislature was passing on obligations to local agencies, taking the credit for having made significant advances in terms of meeting California's needs and not providing the funding for local agencies to meet those needs.
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> "If you adopt a provision that is a redirected effort type of regulation or type of conclusion [i.e., excluding "fixed environment" reimbursement] you put a hole in the intent of that protection for local agencies that is enormous for the legislature to be able to go through in the future, and [for] the state of California to be able to impose obligations on local agencies without any type of reimbursement...and I would say [that would] break faith with the initial authors of SB 90."

Article XIIIB, Section 6, of the State Constitution, as added by Proposition 4/1979, clearly requires the State to reimburse the costs of all "new programs" and "increased levels of service" mandated by the State on local agencies. The Constitution does not limit reimbursement to "increased costs." The obligation of the State to reimburse "new programs" and "increased levels of service" mandated on local agencies and school districts has also been upheld in numerous court decisions. In fact, the Third Appellate Court, in its decision in Long Beach Unified School District v. State of California (Long Beach), concluded that, in enacting Article XIIIB, Section 6, "...the voters provided for mandatory reimbursement except for the three narrowly drawn exceptions found in (a), (b), and (c)...." as follows:

> "(a) Legislative mandates requested by the local agency affected;
> (b) Legislation defining a new crime or changing an existing definition of a crime; or
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

State-mandated activities carried out by existing local agency or school district staff in a "fixed environment" was not excepted from reimbursement by Section 6. In addition, the Long Beach decision, citing Carmel Valley Fire Protection District vs. State of California and Hale vs. Bohannon (1952-38 Cal.2d 458, 471) respectively, states:

"Unsupported legislative disclaimers are insufficient to defeat reimbursement."

--and--

"The Legislature cannot limit a constitutional right."

Conclusion

Reimbursing local agencies for the costs of state-mandated effort that exceeds the time/cost of discontinued mandated activities -- in both a "fixed" and "non-fixed" environment -- is appropriate and is required by the State Constitution.

As illustrated above, in the "fixed" environment the state mandate-related effort clearly results in the same types of increased costs being added to the teacher's total workday as does the addition of a probation report to the probation officer's workday. Therefore, reimbursement of the teacher's time spent complying with state mandates is consistent with both Article XIII B and Government Code Section 17514.

Additionally, the courts have made it clear that regulations and legislation such as Government Code Section 17514, which defines costs mandated by the state as "...any increased costs [emphasis added] which a local agency or school district is required to incur...," cannot be used to circumvent the intent of the voters in enacting Article XIIIB, Section 6. The Court has, in numerous cases, ruled that the State be held fiscally accountable for "new programs" and "increased levels of service" mandated by the State on local government.

I hope the above analysis and comments are helpful to you and the members of the Commission on State Mandates in your consideration of the important issue of reimbursing "fixed environment" labor costs. Please contact me with any questions or if I can be of further assistance.

Sincerely,

Carol Miller

CAROL A. MILLER
EMCN Consultant

cc: William Doyle, EMCN Chair
EMCN Members

Attachment

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The Sacramento Bee

Sunday, March 24, 1991

FORUM

▶ OPINION

Telling tales out of school: A teacher's daily ordeal

By Claudia Ayers
Special to The Bee

IN THEIR collective wisdom, state decision-makers appear to be planning to reduce funding for education. If you think there is anything at all special about California, if you think that you love children or if you wonder if your impressions about what goes on in the average classroom are anywhere close to accurate, then you need to hear me out.

I once worked in the governor's office. I had a career in government, and I was active in the environmental movement. There was much that I admired about government and business. But, the immaturity and antics I observed in the Legislature, the hypocrisy I noticed in the executive branch and the duplicity common in big business convinced me that I would be happier and more effective as a teacher.

I was 40 by the time I did my student teaching in the San Juan district and in the County Court Schools. I was 41 last fall when I began teaching math at Martin Luther King Jr. Junior High in "The Heights." I've never had a job as hard as the one I have now.

Claudia Ayers teaches math at Martin Luther King Jr. Junior High School in Sacramento's Grant School District.

You, dear reader, need this perspective. I am not 23; my eyes are wide open with many lines around them, etched by time, tears and laughter. I work in the Grant district in a school where children of African, Asian, European and Mexican heritage are all well represented.

I am currently working 50 to 60 hours a week for 40 weeks; that means I will work well over the full-time equivalent of a regular job. OK, the first year is the hardest; but all the good teachers are giving a minimum of 40 hours of hard – relentlessly hard (there are virtually no breaks) – hours each week.

Most teachers at my school arrive around 7:30 in the morning and leave after 3:30, taking one to three hours of work home with them. Those three- or five-minute passing bells don't give you enough time to take care of the details of various progress reports, lost admits, make-up homework instructions or discipline reprimands. At 12:30 the bell rings for my lunch period. I usually can get out the door within five minutes, get my lunch and join colleagues for 20 minutes before the passing bell rings at 12:55. I usually give up any notion of checking in at a restroom – there's no time for it.

In addition to five hours of instructional time, we have regular staff, department and parent meetings. Preparing materials and lesson plans is no small job, which is why teachers have a "prep" period. But the prep period often is used for chasing down copies, keys, students, parent phone calls, class changes, AV equipment, supplies, you name it.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

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Los Angeles County's Reconsideration
State-Mandated Claiming Costs [CSM-4204]
Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing reconsiderations, test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject reconsideration.

I declare that it is my information and belief that the County's State mandated duties and costs in implementing the subject law require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I declare that I have reviewed the Commission on State Mandates [Commission] Statement of Decision [CSM-4204], and administrative record thereto, regarding the State-mandated Claiming Costs program, adopted on April 24, 1986.

I declare that it is my information and belief that the only funds that have been appropriated for this State-mandated Claiming Costs program have been State subventions to reimburse local agencies for their "costs mandated by the State", as defined by Government Code Section 17514.

I declare that it is my information and belief that claimants as well as the State Controller's Office could save considerable administrative State-mandated claiming costs by using a "reasonable reimbursement methodology", as permitted under Government Code Section 17518.5:

> (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
>
> (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
>
> (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
>
> (b) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.
>
> (c) A reasonable reimbursement methodology may be developed by any of the following:
>
> (1) The Department of Finance.
> (2) The Controller.
> (3) An affected state agency.
> (4) A claimant.
> (5) An interested party."

I declare that it is my information and belief that State-mandated Claiming Costs program can be derived under an appropriate "reasonable reimbursement methodology" which takes into consideration differences in local claimants' jurisdictions.

I declare that it is my information and belief that reimbursable costs under the State-mandated Claiming Costs program are well in excess of $1,000 per annum for the County of Los Angeles, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Specifically, I declare that I am informed and believe that the County's State mandated duties and resulting costs in implementing the State-mandated Claiming Costs program are reimbursable costs mandated by the State pursuant to Government Code section 17514 and Government Code section 17556.

I declare that I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

12/19/05; Los Angeles, CA
Date and Place


Signature

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Olga Murga states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 20th day of December 2005, I served the attached:

Documents: Los Angeles County's Reconsideration of the State-Mandated Claiming Costs [April 24, 1986] Decision under Case Number 05-RL-4204-02, including *a 1 page letter of J. Tyler McCauley dated 12/19/05, a 12 page narrative, a five page Exhibit A, and a 3 page declaration of Leonard Kaye, now* pending before the Commission on State Mandates.

[X] By transmitting to Commission's e-mail csminfo@csm.ca.gov a PDF copy of the above documents. By mailing original signed above documents to Commission's address: Ms. Paula Higashi, Executive Director; Commission on State Mandates; 900 Ninth Street, Suite 300; Sacramento, California 95814; and by Faxing above documents to Commission at [916] 445-0278.

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of December, 2005, at Los Angeles, California.

Olga Murga